

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

<b>STATE OF ARIZONA, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 6:22-cv-1130</b>
	)	
<b>MERRICK GARLAND, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**DEFENDANTS’ RESPONSE TO PLAINTIFFS’  
REQUEST FOR JUDICIAL NOTICE**

On January 29, 2024, Plaintiffs filed a request for the Court to take judicial notice of certain documents as part of their opposition to Defendants’ motion to dismiss. ECF No. 218. As Plaintiffs did not obtain Defendants’ position on this request before filing, the Court ordered Defendants to respond by February 7, 2024, and indicate “if they oppose judicial noticing of the referenced documents.” ECF No. 222.

Plaintiffs ask the Court to take judicial notice of 30 exhibits: Exhibits 200-205, 207-218, and 220-231.<sup>1</sup> ECF No. 218-1. Defendants oppose taking judicial notice of several of these exhibits.

First, Defendants oppose taking judicial notice of Exhibits 204, 207, 212, 228, 230, and 231. Plaintiffs do not cite any of these exhibits in their opposition. *See generally* ECF No. 217. Because Plaintiffs did not cite these exhibits in their opposition, it is not clear why these documents are relevant and Defendants cannot determine the purpose for which Plaintiffs have included them.

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<sup>1</sup> Exhibit 206 is missing from the exhibit numbers and Exhibit 219 is intentionally omitted from this request. ECF No. 218-1.

In an APA case, Plaintiffs' challenges to the Asylum IFR must be judged "based on the record the agency presents to the reviewing court." *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985); see *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971); *Camp v. Pitts*, 411 U.S. 138, 142 (1973). While the Court can consider extra-record evidence for certain narrow purposes, such as assessing Plaintiffs' standing, because Plaintiffs did not cite or explain the purpose of these exhibits in their opposition, it is not clear whether these exhibits relate in some way to Plaintiffs' arguments for standing or whether Plaintiffs are improperly seeking to supplement the administrative record. As a result, Defendants oppose judicially noticing Exhibits 204, 207, 212, 228, 230, and 231.

Second, Defendants oppose taking judicial notice of Exhibit 202. Plaintiffs listed Exhibit 202 among the exhibits that Plaintiffs ask the Court to take judicial notice of, and listed it as "attached" to the Declaration of Attorney Joseph Scott St. John, but the actual exhibit was not filed on the docket. See ECF No. 218-1; see also attachments to ECF No. 218. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (citing Fed. R. Evid. 201(b)). Because Defendants have not been able to review Exhibits 202 for accuracy and validity, Defendants object to the Court taking judicial notice of this exhibit.

Defendants do not oppose the Court taking judicial notice of Exhibits 200, 201, 203, 205, 208-211, 213-218, 220-227, and 229 for the limited purpose of considering Plaintiffs' arguments for standing, though ultimately nothing in these exhibits demonstrates any harm to Florida or Louisiana.

Date: February 7, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 7, 2024, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which provided an electronic notice and electronic link of the same to all attorneys of record.

By: /s/ Erin T. Ryan

ERIN T. RYAN

Trial Attorney

United States Department of Justice

Civil Division